

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 306

October 7, 1998, 6:56 p.m.
Page S-11690 Temp. Record

INTERNET TAX FREEDOM ACT/Grandfather Provisions

SUBJECT: Internet Tax Freedom Act . . . S. 442. Murkowski motion to table the McCain/Wyden modified amendment No. 3719, as amended.

ACTION: MOTION TO TABLE FAILED, 28-69

SYNOPSIS: The Finance Committee substitute to S. 442 (both the Commerce Committee and the Finance Committee reported versions of the bill), will impose a 2-year moratorium beginning July 29, 1998 on certain State and local taxation of online services and electronic commerce (the Commerce Committee substitute would impose a 6-year moratorium), and will establish an advisory commission on electronic commerce to study the issue and make recommendations during that moratorium.

The McCain/Wyden modified amendment, as amended, would change the moratorium to 3 years instead of 2 years. As amended by a Dorgan amendment, it would define the term "generally imposed and actually enforced." That term is used to define those Internet access taxes that will be "grandfathered" (allowed to remain in force) by this bill. Specifically, access taxes that were in force before October 1, 1998, could remain in force during the moratorium if they had generally been collected or if the taxing authority had "by virtue of a rule or other public proclamation" made known to providers of Internet access services that the taxes had been imposed. Also, the amendment would make clear that this bill did not affect any State or local government's constitutional taxing authority or federally granted taxing authority, and that this bill did not affect any ongoing litigation regarding tax liabilities.

Debate was limited by unanimous consent. After debate, Senator Murkowski moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: After the vote, the amendment was adopted by voice vote.

Those favoring the motion to table contended:

The advisory commission that is going to be created by this bill may eventually decide that some taxes, such as taxes on "pipeline" services like Erols or value-added services like America Online, are appropriate. It may eventually decide that some other

(See other side)

YEAS (28)		NAYS (69)			NOT VOTING (3)	
Republicans (27 or 50%)	Democrats (1 or 2%)	Republicans (27 or 50%)	Democrats (42 or 98%)		Republicans (1)	Democrats (2)
Ashcroft	Torricelli	Abraham	Akaka	Johnson	Specter ⁻²	Glenn ⁻²
Campbell		Allard	Baucus	Kennedy		Hollings ⁻²
Cochran		Bennett	Biden	Kerrey		
Collins		Bond	Bingaman	Kerry		
Coverdell		Brownback	Boxer	Kohl		
D'Amato		Burns	Breaux	Landrieu		
Faircloth		Chafee	Bryan	Lautenberg		
Gramm		Coats	Bumpers	Leahy		
Grams		Craig	Byrd	Levin		
Grassley		DeWine	Cleland	Lieberman		
Gregg		Domenici	Conrad	Mikulski		
Hagel		Enzi	Daschle	Moseley-Braun		
Helms		Frist	Dodd	Moynihan		
Hutchinson		Gorton	Dorgan	Murray		
Hutchison		Hatch	Durbin	Reed		
Jeffords		Inhofe	Feingold	Reid		
Lott		Kempthorne	Feinstein	Robb		
Mack		Kyl	Ford	Rockefeller		
McConnell		Lugar	Graham	Sarbanes		
Murkowski		McCain	Harkin	Wellstone		
Nickles		Roberts	Inouye	Wyden		
Roth		Sessions				
Santorum		Smith, Gordon				
Shelby		Snowe				
Smith, Bob		Thompson				
Stevens		Thurmond				
Thomas		Warner				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

taxes, such as taxes on interstate product sales on the Internet are inappropriate. We do not know how it will decide those questions. However, we are absolutely certain that it will not decide that it is appropriate for a few States and local taxing jurisdictions to place taxes on particular Internet services, but that it will be strictly illegal for every other State and taxing jurisdiction in the country to impose exactly the same taxes. That decision would make no sense, would be grossly unfair, and could well be unconstitutional. We are amazed that Senators seriously think that it is a good idea to cement into law, for the duration of this moratorium, the type of disparity in Internet taxes that we are working to eliminate with this bill. On that basis alone we should reject this amendment.

Even if our colleagues do not mind the illogic and inequity of this provision, they should oppose it for two other reasons. First, it will reward those State and local governments that unethically rushed to pass Internet laws in anticipation of this legislation. This bill has been negotiated for over 18 months now, and it has been widely anticipated that it would be enacted. Many taxing jurisdictions clearly hoped to impose taxes on the Internet gravy train before the moratorium was enacted, on the hope that their taxes would then be grandfathered; they should not be rewarded for that behavior.

Secondly, and perhaps most importantly, agreeing to this amendment could eventually cause enormous harm to the United States in world trade. Some of the biggest problems the United States has had in getting countries to stop unfair trade practices have come from grandfather clauses in treaties that have protected particular businesses and practices. If we set this precedent, what will stop other countries from quickly enacting taxes on all Internet goods from the United States and then saying that they should get the same grandfather protection that we are giving to a few taxing jurisdictions in this bill? The United States would not have any basis for objecting, after it had done exactly the same thing. Thus, if we pass this amendment, we may well end up inadvertently subjecting United States businesses to billions of dollars more per year in foreign taxes.

We understand that there are a few parochial interests at stake in grandfathering in some of the existing Internet taxes. Defending those interests may speed passage of this bill. However, defending those interests is wrong, and may come at a huge cost. We therefore strongly urge our colleagues to table this amendment.

Those opposing the motion to table contended:

Argument 1:

Some of our colleagues object to the McCain amendment, not because of its extension of the moratorium to 3 years, but because it contains language grandfathering in some Internet taxes. We do not object to that language. We think that the fairest way to impose a moratorium is just to freeze the current situation in place. The grandfathering language in this bill advances that principle. Additionally, tabling this amendment would eliminate language to make clear that we are only limiting the authority of State and local governments to tax the Internet, and that this bill will not affect ongoing disputes over current tax liabilities. All of that language is meritorious and should be supported. Therefore, we oppose the motion to table.

Argument 2:

This amendment is the product of several days of negotiation. It contains an extension of the moratorium and grandfather provisions. We of course favor the compromise we have negotiated, and thus oppose the motion to table.